

## REMARKS/ARGUMENTS

Applicant wishes to thank examiner for extending the courtesy of a telephonic interview on January 2, 2008. In accordance with the discussion during the interview, the claims of the present application have been amended to place the application in condition for allowance or appeal, and to more specifically claim the flexibility of the base of the closure as well as its attachment to at least one of the flexible members. No new matter is added nor is any further search of the prior art required by these amendments.

### **Claims Rejection – 35 U.S.C. § 102(b): Claims 32, 34, 35, 42-44, 46 and 48-51**

Examiner rejected Claims 32, 34, 35, 42-44, 46 and 48-51 under 35 U.S.C. § 102(b) as being anticipated by Brown (USPN 5,409,144). Applicant respectfully traverses this rejection and seeks reconsideration on the grounds set out below.

Examiner stated that Brown discloses a flexible container for liquid cleanser having two flexible members (12a, large flat sides). Examiner further elaborated that Brown discloses two members in that his unitarily constructed container has two sidewalls. However, applicant submits that the two members as claimed in the present invention are not equivalent to flat sides or sidewalls.

Claims in a patent application are to be given their broadest reasonable interpretation "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Indeed, claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

In the present case, applicant's specification states the following: "The container 10 includes at least one flexible member 12... The flexible member 12 may be integrally formed from a single piece of material...to form a chamber 16 therein. Alternatively, a plurality of flexible members 12

may be joined to form the chamber 16.” Thus, a clear distinction is made between a flexible container composed of one member and a container composed of two or more members joined together. As examiner admits, Brown discloses a unitarily constructed container, and thus only teaches a container composed of one member. In contrast to Brown, the present claims are drawn to a container composed of two distinct members that are joined together to form a chamber.

While “sides” or “sidewalls” may designate identifiable portions of an object, they are not equivalent to “members” as claimed in the present invention. To highlight the difference, one need only imagine the container of Brown formed in the shape of a sphere. Such a container would have no distinguishable sides or sidewalls, but would nonetheless be composed of a single member. It would also be possible to form a sphere by joining multiple members, the result again being a container with no sides, but now with multiple members. Thus, a side or sidewall is not equivalent to a member as claimed in the present invention. Examiner’s finding of anticipation by Brown on this ground is therefore unwarranted in light of this distinction, and withdrawal of the rejection is respectfully requested.

Examiner stated that Brown discloses a flexible closure (Figs 4-16) having a hollow cylinder (Fig 17, 7a), having an open first end (6a), and an open second end (at 4a) coupled to the flexible members for repetitive filling and expelling of liquid cleanser (18). Examiner also admitted that Brown discloses a rigid base, but nonetheless stated that Brown discloses a flexible closure mechanism with regard to the moving sections (6).

Independent claims 32 and 34 have been amended to specifically claim a closure having a flexible base affixed to at least one of the flexible members. Notwithstanding applicant’s belief that the previously presented claims were allowable, the presently amended claims are clearly distinguishable from Brown on the basis of the flexible base. As examiner admits, Brown teaches a closure having a rigid base, which is necessary for proper functioning of Brown’s valve mechanism. In contrast, applicant’s invention is drawn to a closure having a flexible base, which facilitates mounting along flexible contoured areas.

The present invention is further distinguishable from Brown on the basis of its open-ended design. As examiner admits, Brown's valve mechanism is only open under pressure, yet examiner equates such a design with the claimed limitations of applicant's invention. Applicant posits that a closed valve composed of flaps that open only when significant pressure is applied is not the equivalent of a "hollow cylinder having an open first end and an open second end" as claimed in the present invention. The open ends of the present invention are open regardless of pressure, in contradistinction to the valve taught by Brown, which is closed by default, only opening under significant pressure.

Furthermore, it is the open-ended design of the present invention that facilitates its use for "repetitive filling... of liquid cleanser" as claimed in claims 32 and 34. Examiner states that Brown discloses a closure for repetitive filling. However, applicant is unable to find the teaching of such a use in the disclosure of Brown. In fact, just the opposite would seem to be true, as Brown's closure mechanism is "self-sealing" ((Col. 1, Line 19) and therefore discourages repetitive filling. Applicant specifically claims repetitive filling as part of its invention, which Brown clearly does not, and applicant's invention possesses an open-ended closure distinguishable from the closed design of Brown. Therefore, withdrawal of the rejection and passage of the claims to allowance is respectfully requested.

Examiner stated that Brown discloses a container having a modulus of elasticity conducive to gaseous inflation. However, applicant is unable to find in the disclosure of Brown any discussion regarding elasticity of the container for gaseous inflation.

Materials having a modulus of elasticity conducive to gaseous inflation include materials that are elastic and capable of both deformation as well as expansion. However, in the case of the Brown reference a material capable of expansion upon pressurization would not be suitable, as this would prevent the valve mechanism from opening. While examiner notes that gaseous inflation need not pressurize a container, applicant submits that examiner has read into Brown this limitation, as gaseous inflation is neither an intended purpose nor a disclosed function of Brown. According to MPEP Section 2131, in order for a reference to anticipate a claim, "the identical invention must be

shown in as complete detail as is contained in the ...claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236. In the present instance, Brown does not disclose in any detail pertaining to elasticity for gaseous inflation, and therefore does not anticipate this limitation in applicant’s claimed invention.

Examiner stated that Brown discloses a stopper (Fig 16, 71) to seal the hollow cylinder, though the object cited in Brown is in fact a “removable cap” (Col. 16, Line 13). Examiner admits that the removable cap is not necessary to seal the valve, but nonetheless states that the removable cap operates as a stopper by providing a further seal for the cylinder.

Applicant’s claims are directed to a stopper for sealing the open end of a cylinder. As discussed above, Brown does not disclose a cylinder with an open end, but rather a closure mechanism having a closed valve that is self-sealing. Therefore, the “removable cap” of Brown does not function to seal an open end, as there is no open end to seal. Furthermore, examiner states that Brown discloses an “open end” sufficient to meet applicant’s claimed limitations when the container is under pressure. Applicant disputes this as discussed above. But assuming for the sake of argument that this is true, then in order to meet applicant’s claimed limitation of sealing an open end, the removable cap of Brown must be operable to seal the valve when it is under pressure and actually open. However, it is obvious from Brown’s disclosure that this is neither the intended nor the disclosed function of the removable cap. Because Brown’s removable cap does not and cannot function as a stopper for sealing an open end, it does not anticipate applicant’s claims.

In light of the foregoing amendment to the claims, and for the reasons stated above, it is respectfully submitted that all the elements in the claimed invention are not found in Brown, and as such are not anticipated by this reference. Reconsideration and withdrawal of the rejections related thereto is respectfully requested.

**Claims Rejection – 35 U.S.C. § 103(a): Claims 33, 36, 37, 40, 41, 45 and 47**

Examiner rejected Claim 33 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,14) in view of Besse et al. (USPN 5,810,201). As set out above, Brown does not teach all the elements of Claim 32, from which Claim 33 depends. Besse et al. merely teaches a container for liquid soap created from polyvinyl chloride. Accordingly, the combination of Brown and Besse et al. does not disclose, teach or suggest all the elements of Claim 33, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

Examiner rejected Claims 36, 37, 40 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,14) in view of Haugk et al. (USPN 5,937,554). As set out above, Brown does not teach all the elements of Claims 32 and 34, from which Claims 36, 37, 40 and 41 depend. Haugk et al. merely teaches a container with a film insert in the container. Accordingly, the combination of Brown and Haugk et al. does not disclose, teach or suggest all the elements of Claims 32 and 34, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

Examiner rejected Claim 45 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,14) in view of Flackett et al. (USPN 6,343,712). As set out above, Brown does not teach all the elements of Claim 32, from which Claim 45 depends. Flackett et al. merely teaches a liquid soap dispenser formed in the shape of an animal. Accordingly, the combination of Brown and Flackett et al. does not disclose, teach or suggest all the elements of Claim 33, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

Examiner rejected Claim 47 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,144) in view of Henning et al. (USPN 3,623,638). As set out above, Brown does not teach all the elements of Claim 32, from which Claim 47 depends. Henning et al. merely teaches a liquid soap dispenser formed in the shape of a flower. Accordingly, the combination of Brown and

Henning et al. does not disclose, teach or suggest all the elements of Claim 33, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

### **Conclusion**

In conclusion, based on the foregoing amendments to the claims and arguments discussed above, it is submitted that the claimed invention is not anticipated or obvious in light of the cited prior art. It is respectfully submitted that the claims are not rendered unpatentable and are in a condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested.

Respectfully submitted,



David F. Lee  
Reg. No. 60,474

DFL/rm  
Date: January 2, 2008  
LARIVIERE, GRUBMAN & PAYNE, LLP  
Post Office Box 3140  
Monterey, CA 93942  
(831) 649-8800